

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Brigar, Inc.	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Corporation	:	
Franchise Tax under Article 9A of the Tax Law for	:	
the Years 1977 & 1978.	:	

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of April, 1983, he served the within notice of Decision by certified mail upon Brigar, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Brigar, Inc.
25 Sand Creek Rd.
Albany, NY 12205

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
27th day of April, 1983.

David Parchuck

Annice A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Brigar, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1977 & 1978. :

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of April, 1983, he served the within notice of Decision by certified mail upon Mary Anne Tommaney the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mary Anne Tommaney
DiFabio, Tommaney & Legnard
4 Automation Lane, Computer Park
Albany, NY 12205

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
27th day of April, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 27, 1983

Brigar, Inc.
25 Sand Creek Rd.
Albany, NY 12205

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Mary Anne Tommaney
DiFabio, Tommaney & Legnard
4 Automation Lane, Computer Park
Albany, NY 12205
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BRIGAR, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations	:	
under Article 9-A of the Tax Law for the Years	:	
1977 and 1978.	:	

Petitioner, Brigar, Inc., 25 Sand Creek Road, Albany, New York 12205, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1977 and 1978 (File No. 30577).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Office Campus, Albany, New York, on August 11, 1982 at 1:15 P.M. Petitioner appeared by DiFabio, Tommaney and Legnard, P.C. (Mary Anne Tommaney, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner is entitled to investment tax credits claimed upon its acquisition of labelling and addressing machines, a tying machine and mail-inserting machines.

FINDINGS OF FACT

1. On its corporation franchise tax reports for the years 1977 and 1978, petitioner, Brigar, Inc., claimed investment tax credits on the equipment and in the amounts shown below.

(a) corporation franchise tax report for 1977

<u>PROPERTY</u>	<u>CREDIT CLAIMED</u>
Pendadoors	\$ 22.48
Cheshire Head	212.51
Six-station Inserter	406.00
Tying machine	33.79
Cheshire Base	168.42
	<u>\$843.20</u>

(b) corporation franchise tax report for 1978

<u>PROPERTY</u>	<u>CREDIT CLAIMED</u>
Lo Head	\$ 332.18
525 E Base	309.83
Inserter and Attachment	461.24
	<u>\$1,103.25</u>

2. On July 11, 1980, the Audit Division issued to petitioner two notices of deficiency, asserting additional franchise tax due under Article 9-A of the Tax Law for 1977 and 1978 in the respective amounts of \$843.20 and \$1,103.25, plus interest thereon. The Audit Division disallowed the investment tax credits on the ground that the property on which the credits were claimed was not used in the manufacture of inventorable goods.

3. Petitioner's business activity is the preparation of catalogs, magazines, newspapers and other publications for deposit in the United States mail. Petitioner's clients are printers and publishers who furnish it with the printed matter and with mailing labels. In approximately 10 percent of cases, Brigar, Inc. itself prints the mailing labels, from magnetic tape or scan cards supplied by the client, via computer line printer. Petitioner cuts and affixes the mailing labels to the publications and then sorts, stacks and ties the publications in such a manner as to obtain postage rate discounts for its clients. Brigar, Inc. also performs folding and nesting for clients.

4. The Cheshire base (525 E) and Cheshire head are used together in operation. Four to five Brigar, Inc. employees feed publications into this labelling and addressing machine. Vertical and rotary blades in the head cut the preprinted labels into individual one-inch by four-inch mailing labels. The machine applies glue to the labels and affixes the labels to the publications.

The publications are transported by conveyor, then sorted and assembled into bundles by petitioner's employees, according to carrier route, zip code, city, sectional center facility or other Post Office designation. These employees have to be skilled since they must be able, at a glance, to recognize the breaks in the sorting operation.

The tying machine assists in the bundling of publications. The bundles are then placed into mailing bags with tags displaying the destination.

5. The inserter gathers and nests one to six inserts, places them in an envelope, seals the envelope and affixes postage via a meter. This printed matter is also sorted, tied and sacked, as above-described.

6. The minimum basic postage rate per piece is 10.9 cents. Petitioner's sorting, bundling and sacking enables the printer or publisher to obtain the five-digit postage rate (9.3 cents per piece) or the carrier route rate (7.9 cents per piece).

7. The printer or publisher retains title to the publications until they are delivered by petitioner to the Post Office. On occasion, petitioner stores mailing bags containing sorted bundles of printed material for its customers for up to a month's time, depending upon the appropriate mailing date.

8. Petitioner's operations produce some waste: trade practice allows Brigar, Inc. one-half percent of print run as spoilage.

9. Petitioner maintains that the function it performs for printers and publishers is an integral part of the printing trade and that this function is the end step in the manufacture of printed material for consumers.

CONCLUSIONS OF LAW

A. That subdivision 12 of section 210 of the Tax Law makes available to the corporate taxpayer an investment tax credit with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section 167 of the Internal Revenue Code, have a useful life of four years or longer, are acquired by purchase as defined in section 179(d) of the Code, have a situs in New York and are principally used by the taxpayer in the production of goods by (inter alia) manufacturing, processing or assembling. Paragraph (b) of said subdivision defines manufacturing, for purposes of the credit, as "the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment."

The objectives of the credit were set forth in a Memorandum filed by the Department of Taxation and Finance and include the following: "...[to] encourage the modernization of antiquated production facilities and [to] make New York a more attractive location for manufacturers by giving a tax credit for new investments in production facilities." McKinney's 1969 Session Laws of New York 2503.

B. That petitioner's labelling and addressing machines, tying machine and inserters are not used in the production of goods and therefore do not qualify for the credit. Petitioner receives publications from its customers (which

publications are the property of its customers until deposit with the Post Office) and performs services upon the publications which enable them to be mailed at reduced postage rates; but petitioner itself does not produce any goods via the equipment in question.

C. That the petition of Brigar, Inc. is hereby denied, and the notices of deficiency issued on July 11, 1980 are sustained in full.


DATED: Albany, New York

STATE TAX COMMISSION

APR 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER